

## § 930.59

## 7 CFR Ch. IX (1–1–11 Edition)

After the diversion has been accomplished, the Board shall issue to the diverting grower a diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule prescribed in rules and regulations as the Board, with the approval of the Secretary, may recommend to implement this section.

[61 FR 49942, Sept. 24, 1996, as amended at 67 FR 51715, Aug. 8, 2002]

### § 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

[67 FR 51715, Aug. 8, 2002]

### § 930.60 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole responsibility of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

## Agricultural Marketing Service, USDA

## § 930.70

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries.

(c) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

### § 930.61 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for inspection relating to the primary inventory reserve as the Board may deem to be appropriate. The Board, with the approval of the Secretary, may establish such rules and regulations as are necessary and incidental to the administration of this section.

### § 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided*, that growers engaging in such activities under the authority of § 930.58 shall be issued

diversion certificates for such activities.

[67 FR 51715, Aug. 8, 2002]

### § 930.63 Deferment of restricted obligation.

(a) *Bonding.* The Board, with the approval of the Secretary, may require handlers to secure bonds on deferred inventory reserve tonnage. Handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by the handler. This date shall be not later than 60 days prior to the end of that crop year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking within thirty (30) days after the Secretary announces the final restricted percentage under § 930.51. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to the acceptable deferred date the handler will have fully satisfied the restricted percentage amount required by § 930.51.

(b) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

## REPORTS AND RECORDS

### § 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the